

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PHILLIP EUGENE RAY, JR.,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PHILLIP EUGENE RAY, SR.,

Respondent-Appellant.

UNPUBLISHED

May 18, 2010

No. 294829

Wayne Circuit Court

Family Division

LC No. 06-455534-NA

Before: METER, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (h), and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent first argues that the trial court clearly erred in finding that statutory grounds existed to terminate his parental rights. We disagree. On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (h), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

We find clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(i). When the child was removed from the home, respondent was incarcerated, with no housing or income, and unable to provide the child with any financial support.¹ At the termination hearing, respondent was again incarcerated, with no housing or income, and still unable to provide the child with any financial help. Thus, the conditions that existed at the adjudication continued to exist. Respondent's long history of criminal involvement and incarcerations, and the continuation of this behavior during the three years of this case, provided sufficient evidence to support a finding that the conditions would not be rectified within a reasonable time considering the child's age.

We also find clear and convincing evidence to support termination under MCL 712A.19b(3)(g). A "parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214;

¹ At the time, the minor child was living with his mother, who had an unsubstantiated Protective Services history dating back to 2004 for physical abuse and neglect, medical neglect, and substance abuse. The home and the children living in the home were found to be extremely filthy, and there was almost no food in the home. All of the children had head lice and scabies. The child's mother has since deceased.

661 NW2d 216 (2003). See also *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000). Here, there was some compliance with parts of the treatment plan. Respondent completed a parenting class, and his behavior during visitation was deemed to be appropriate. However, although his interactions with his child may have been appropriate, there is more to parenting than visiting with the child for an hour a week. Respondent was in and out of prison during the proceedings and was incarcerated at the time of the termination hearing. Thus, he had failed to benefit from services enough to understand that he needed to stop his criminal lifestyle and position himself to parent and provide a proper home for his child. The record shows that respondent did not change his criminal lifestyle and did not benefit from his parenting classes. See *In re Gazella*, 264 Mich App at 676.

Similarly, we find clear and convincing evidence to support termination under MCL 712A.19b(3)(h). Respondent's earliest release date from prison was about nine months after the termination hearing. The statute provides that the parent must be "imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years." The statute does not require that the parent be imprisoned for a period exceeding two years. Here, respondent had demonstrated for over three years that he was not able to stabilize his own life and remain out of prison long enough to establish a home or find a legal form of employment. Instead, he continued his criminal lifestyle. Based on his history and his actions during these proceedings, there was clear and convincing evidence to support a finding that he would not be able to provide a normal home for his child for a period exceeding two years, regardless of his outdate, or even if he were released earlier. He had not provided for the child's proper care or custody in the past, and there was no reasonable expectation that he would be able to do so within a reasonable time considering the child's age.

Finally, we find clear and convincing evidence to support termination under MCL 712A.19b(3)(j). Respondent was incarcerated several times during the course of the proceedings. Thus, he was unable to fully comply with the treatment plan. Each incarceration was, in essence, neglect and desertion of his child. He never demonstrated that he had learned from his past mistakes. He continued to involve himself in a criminal lifestyle. There was no evidence that he was ready to accept his obligation to be a parent to his child by providing stability, care, and a proper home for his child. Although respondent did comply with some parts of his treatment plan, there was clear and convincing evidence to support the conclusion that there was a reasonable likelihood that the child would be harmed if he was placed in respondent's care and custody.

The trial court also did not clearly err in its decision regarding the child's best interests. *In re Trejo*, 462 Mich at 356-357. MCL 712A.19b(5) requires an affirmative finding that termination of parental rights is in the child's best interests before the court may terminate parental rights. *In re Hansen*, 285 Mich App 158, 164; 774 NW2d 698 (2009); MCR 3.977(E)(4). The child had been in foster care for over three years at the time of the termination hearing. Respondent had spent much of that time incarcerated and was incarcerated at the time of the termination hearing. The child had just turned five years old a month before the hearing. He had not seen respondent for over six months, and the evidence shows that respondent did not maintain any contact with his child by cards, notes, or gifts during that time period. Whatever bond may have formed between respondent and the child had certainly lessened or evaporated during the six months respondent was incarcerated before the hearing. The child needed stability

and permanency in his life. Respondent had clearly demonstrated that he was not able to provide that, and there was no reasonable expectation that he would be able to do so within a reasonable time. The trial court did not clearly err in finding that termination was in the child's best interests. *Hansen*, 285 Mich App at 164; MCR 3.977(E)(4).

Affirmed.

/s/ Patrick M. Meter

/s/ Christopher M. Murray

/s/ Jane M. Beckering